being in force a policy of insurance in respect of third party risks. He pleaded guilty to the first charge and was fined $150. On the second charge, he claimed trial and in his defence he produced an insurance policy which on the face of it was still valid at the material time, but it contained the following proviso in respect of persons or classes of persons permitted to drive:

"Provided that the person is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

The learned magistrate relying apparently on the decision of a Singapore case in *Public Prosecutor* v. *Albert See*[1] found the defendant guilty and sentenced him to a fine of $120 and also disqualified him from driving for one year. Subsequently, however, the learned magistrate found the decision in the Singapore case was inconsistent with the Malayan case of *Tan Kuan Chin* v. *Public Prosecutor*[2] and brought the case up for revision.

It seems to me that there are two limbs in the above proviso and that the defendant is covered by the insurance policy so long as he comes under one of them. As there was no evidence that the defendant had not been permitted by law to drive and that he was disqualified by court order from driving the motorcar in question, the defendant appeared to have fallen under the second limb of the said proviso. He had not, therefore, contravened a term of the insurance policy. Be that as it may, in my view, it is a well established principle in our judicial system that decisions of a High Court on questions of law are binding on all subordinate courts; and although decisions of a Singapore High Court have a persuasive authority in the courts of this country, in cases where there are conflicting authorities between the two High Courts after "Singapore Day" (August 9, 1965), magistrates and presidents are bound to follow the decisions of our High Courts.

Under the circumstances, I quash the conviction on the second charge and set aside the sentence imposed as well as the order of disqualification. The fine of $120, if already paid, should be refunded to the defendant.

Conviction quashed. Sentence and order of disqualification set aside.

SAMIVELLU v. PUBLIC PROSECUTOR

[A.Cr.J. (Mohamed Azmi J.) October 1, 1971]

[Kuala Lumpur — Criminal Appeal No. 77 of 1971]

Internal Security — Proclaimed area — Behaving in a manner with intent to provoke breach of peace in — Public Order (Preservation) Ordinance, 1958, ss. 3 & 9.

Evidence — Internal Security — Omission to produce in evidence Gazette notification of a proclaimed area or certified copy of the proclamation — Effect on prosecution case — Whether court bound to take judicial notice of the proclamation — Evidence Ordinance, 1950, s. 57(1)(a).

Interpretation — Provisions of Public Order (Preservation) Ordinance, 1958 — Relevant interpretation law — Interpretation and General Clauses Ordinance, 1948 — Interpretation Act, 1967, s. 2(2).

The appellant was charged for behaving in a manner with intent to provoke a breach of the peace in an area proclaimed by the Minister under section 3 of the Public Order (Preservation) Ordinance 1958, an offence punishable under section 29 of the said Ordinance.

The learned magistrate found the appellant guilty and sentenced him to six months imprisonment. One ground of appeal, *inter alia*, was that the learned magistrate erred in law in construing section 57 of the Evidence Ordinance. In this case, neither did the charge, preferred against the appellant, quote the *Gazette* notification of the alleged proclamation, nor was a certified copy of the proclamation published by the Minister, produced in evidence by the prosecution. On appeal, appeal,

Held, allowing the appeal: (1) a proclamation or a declaration of renewal made by the Minister under section 3 of the Public Order (Preservation) Ordinance, 1958 comes within the ambit of section 57(1)(a) of the Evidence Ordinance. In this case, the learned magistrate, in construing section 57 of the Evidence Ordinance, is bound only by section 57(1)(a) to take judicial notice of the proclamation when the relevant *Gazette* notification or publication made by the Minister is either quoted in the charge or adduced in evidence;

(2) as there was no evidence that the alleged offence had taken place within a proclaimed area, no *prima facie* case had been made out and the appellant ought to have been acquitted and discharged without his defence being called.

MAGISTRATE'S CRIMINAL APPEAL.

G. Joseph for the appellant.

Radzi bin Tan Sri Sheikh Ahmad (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: The appellant was charged for behaving in a manner with intent to provoke a breach of the peace in an area proclaimed by the Minister charged with the responsibility for Internal Security under section 3 of the Public Order (Preservation) Ordinance No. 46/58, an offence punishable under section 29 of the said Ordinance. After hearing the case for the prosecution and the defence, the learned magistrate found the appellant guilty and upon conviction sentenced him to six months imprisonment. The appellant now appeals against conviction and sentence. Of the five grounds of appeal argued before me, I only found one that merits consideration, *viz.* that the learned magistrate erred in law in construing section 57 of the Evidence Ordinance.

Under section 3 of the Public Order (Preservation) Ordinance 1958, the Minister charged with the responsibility of Internal Security may proclaim any area in the Federation as a proclaimed area, and such pro-

clamation shall cease to have effect upon the expiration of one month from the date upon which it was made, provided that a proclamation in force may be renewed by declaration of the Minister from time to time for such period not exceeding one month at a time, as may be specified in the declaration. Sub-sections (4) and (5) of the said section provide:

"(4) A proclamation made under sub-section (1) and a declaration of renewal made under sub-section (3) shall be published in such manner as the Minister thinks necessary for bringing it to the notice of all persons who in his opinion ought to have notice thereof and shall have effect as soon as such notice has been given, without publication in the *Gazette*.

(5) A copy of every proclamation made under sub-section (1) and of every declaration of renewal made under subsection (3) shall be published in the *Gazette* and laid before Parliament as soon as possible after it has been made and if resolutions are passed by both Houses of Parliament annulling such proclamation or declaration, it shall cease to have effect, notwithstanding the provisions of sub-sections (2) and (3), but without prejudice to anything previously done by virtue thereof."

In this case, neither did the charge preferred against the appellant quote the *Gazette* notification of the alleged proclamation nor was a certified copy of the proclamation published by the Minister produced in evidence by the prosecution. In the grounds of judgment, the learned magistrate stated:

"The place of incident was a proclaimed area and though no proper *Gazette* was produced by the prosecution the court could take judicial notice (see section 57 of the Evidence Ordinance No. 11 of 1950)."

Under section 57(1)(a) of the Evidence Ordinance, the court is bound to take judicial notice of all laws or regulations having the force of law now or heretofore in force or hereafter to be in force in any part of the Federation. The term "law" is defined both by Article 160(2) of the Federal Constitution and Item (43C) of section 2(1) of the Interpretation and General Clauses Ordinance, 1948 to include *written law*, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or in any part thereof. "Written law" is defined by Item (97) of the Interpretation and General Clauses Ordinance, 1948 to mean all Ordinances and Enactments in force in the Federation or any part thereof and all *subsidiary legislation* made thereunder, and includes the Federal Constitution. The term "subsidiary legislation" is further defined by Item (88) of the said sub-section to mean any Order in Council, *proclamation*, rule, regulation, order, notification, by-law or other instrument made under any Act of Parliament, Ordinance, Enactment or other lawful authority and having legislative effect.

It is necessary to observe that for the purpose of interpreting the provisions contained in the Public Order (Preservation) Ordinance, 1958, the relevant interpretation law to be applied is the Interpretation and General Clauses Ordinance No. 7 of 1948, and not the Interpretation Act No. 23 of 1967 as the latter Act does not apply to the interpretation of Acts of Parliament enacted before May 18, 1967 (see section 2(2) of Interpretation Act, 1967 and P.U. 204/11.5.1967).

In view of the interpretations as set out above, it is clear that a proclamation or a declaration of renewal made by the Minister under section 3 of the Public Order (Preservation) Ordinance, 1958 comes within the ambit of section 57(1)(a) of the Evidence Ordinance. In the present case, although the proclamation was made by a Minister, I am unable to agree with the submission of learned counsel for the appellant that it should be construed as an executive act and should be proved under section 78 of the Evidence Ordinance by production of the *Gazette*. For the purpose of section 57(1)(a), the distinction between an executive act and an act made in the exercise of the power of legislation should be recognized. Be that as it may, in this particular case, the learned magistrate in construing section 57 of the Evidence Ordinance is only bound by section 57(1)(a) to take judicial notice of the proclamation when the relevant *Gazette* notification or publication made by the Minister is either quoted in the charge or adduced in evidence.

As there was no evidence at all that the alleged offence had taken place within a proclaimed area, no *prima facie* case had been made out and the appellant ought to have been acquitted and discharged without his defence being called.

I, therefore, allow the appeal and set aside the conviction and sentence.

Appeal allowed.

Conviction and sentence set aside.

Solicitors: *Lawrence & Joseph.*

ZAHARAH v. HONG KIN WONG & ANOR.

[O.C.J. (Mohamed Azmi J.) October 2, 1971]

[Kuala Lumpur — Civil Suit No. 299 of 1970]

Damages — Personal injuries — Absolute liability conceded — Assessment of general damages.

The plaintiff who was a passenger in a motor-car which was involved in an accident, suffered various injuries. The defendants conceded absolute liability. The parties agreed on special damages in the sum of $750. The only issue before the court was the amount of general damages to be awarded. The learned judge found it proper and helpful to divide the injuries sustained into four categories in assessing general damages in this case. General damages were assessed at $10,000. In arriving at this figure all relevant factors were taken into consideration including the age of the plaintiff, the fact that she was a married woman, and that there was no loss of future earnings.

Cases referred to:-

(1) *Patimah binte Mat & Ors.* v. *Yong Ah Chak* [1964] M.L.J. lxxiii.

(2) *Ng Beng* v. *Suki bin Ahmad* [1970] 1 M.L.J. xvi.

(3) *Too Kwee* v. *Chew Bah Chik* [1965] 2 M.L.J. xxvii.

(4) *Mat Derus bin Hamil & Ors.* v. *Sahadevan* [1965] 2 M.L.J. viii.

(5) *Chong Kim Kee* v. *Tan Kok Hua* [1968] 2 M.L.J. xxii.